



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 65-2012

28 May 2012

MR. BERNARDINO A. VICENTE, MD, FPPA, MHA, CESO IV
Medical Center Chief II
NATIONAL CENTER FOR MENTAL HEALTH (NCMH)
Nueve de Pebrero St.,
Mandaluyong City

Attention : **Ms. BERNADETTE T. SELUDO, MD, FPSMID, MPH**
Chairperson
BIDS AND AWARDS COMMITTEE (BAC) - FOODSTUFFS & OTHER SUPPLIES

Re: Negotiated Procurement

Dear Dr. Vicente:

We respond to your letter dated 15 February 2012 requesting for advice on the options that NCMH can adopt in its procurement of liquefied petroleum gas (LPG) fuel refill while waiting for the conclusion of its scheduled public bidding under Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR).

As represented, the NCMH relies on a supplier whose contract has expired in December 2011 for its LPG fuel refill. To avoid disrupting the hospital operations, the delivery of the LPG continued with the particular supplier through a negotiated mode of procurement. The NCMH-BAC for foodstuffs and other supplies is scheduled to conduct its public bidding for the LPG fuel refill, but in the interim, it has decided to resort to negotiated procurement since contract extension is limited only to services and not goods. We note, however, that you failed to mention the specific instance of negotiated procurement that NCMH used in such procurement.

For your guidance, Section 10 of the IRR of RA 9184 mandates that all procurement shall be done through competitive public bidding. Resort to alternative methods of procurement such as negotiated procurement is acceptable subject to the prior approval of the Head of the Procuring Entity (HOPE) and whenever justified by the conditions to promote economy and efficiency.¹

For purposes of discussion, and taking into consideration the circumstances presented, we presume that NCMH resorted to either Negotiated Procurement (Small Value

¹ NPM No. 17-2008 dated 2 September 2008

Procurement) or Negotiated Procurement (Emergency Cases). We wish to note that certain conditions have to be satisfied prior to using either emergency cases or SVP.

Section 53.2 of the IRR contemplates three instances for the application of negotiated procurement under emergency cases:

1. In case of imminent danger to life or property during a state of calamity;
2. When time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property; and
3. To restore vital public services, infrastructure facilities and other public utilities.

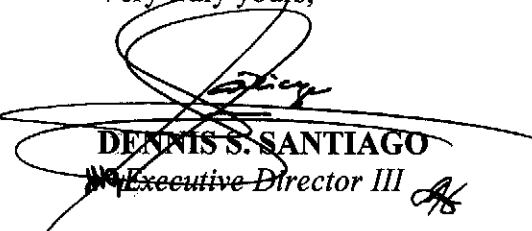
On the other hand, Section 53.9 of the IRR requires SVP to strictly comply with the conditions stated therein, in addition to the threshold set in Annex "H"² of the IRR.

Clearly, procurement through emergency cases or SVP entirely depends on the surrounding circumstances attending the specific procurement activity. However, in both cases, the procuring entity should remember that splitting of government contracts is strictly prohibited.

Based on the foregoing, we are of the opinion that NCMH should ensure the efficient conduct of public bidding for the procurement of its LPG fuel refill. However, in the interim, NCMH may continue resort to alternative methods of procurement pending award of contract for its LPG requirements, but NCMH should ensure that all the conditions or circumstances for the alternative methods adopted duly exist.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented. Should you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III AS

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² Thresholds for Shopping and Small Value Procurement